

"SECTION 1. IC 8-1-2-42 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 42. (a) No change shall be made in any schedule, including schedules of joint rates, except upon thirty (30) days notice to the commission and approval by the commission, and all such changes shall be plainly indicated upon existing schedules or by filing new schedules in lieu thereof thirty (30) days prior to the time the same are to take effect. The commission may prescribe a shorter time within which a change may be made. A public, municipally owned, or cooperatively owned utility may not file a request for a general increase in its basic rates and charges within fifteen (15) months after the filing date of its most recent request for a general increase in its basic rates and charges, except that the commission may order a more timely increase if:

- (1) the requested increase relates to a different type of utility service;
- (2) the commission finds that the utility's financial integrity or service reliability is threatened; or
- (3) the increase is based on:

(A) a rate structure previously approved by the commission; or

(B) orders of federal courts or federal regulatory agencies having jurisdiction over the utility.

The phrase "general increase in basic rates and charges" does not include changes in rates related solely to the cost of fuel or to the cost of purchased gas or purchased electricity or adjustments in accordance with tracking provisions approved by the commission.

(b) No schedule of rates, tolls, and charges of a public, municipally owned, or cooperatively owned utility which includes or authorizes any changes in charges based upon costs is effective without the approval of the commission. Before the commission approves any changes in the schedule of rates, tolls, and charges of an electric utility ~~which that~~ generates and sells electricity based upon the cost of fuel to generate electricity or upon the cost of fuel included in the cost of purchased electricity, the utility consumer counselor shall examine the books and records of the public, municipally owned, or cooperatively owned generating utility to determine the cost of fuel upon which the proposed charges are based. **To the extent permitted under section 49 of this chapter, the utility consumer counselor may also examine the books and records of any affiliated interest from which the utility purchases fuel or electricity to determine the reasonableness of the cost of fuel or electricity upon which the proposed charges are based.** In addition, before such a fuel cost charge becomes effective, the commission shall hold a summary hearing on the sole issue of the fuel charge. The utility consumer counselor shall conduct ~~his~~ a review and make a report to the commission within twenty (20) days after the utility's request for the fuel cost charge is filed. The commission shall hold the summary hearing and issue its order within twenty (20) days after it receives the utility consumer counselor's report. The provisions of this section and sections 39, 43, 54, 55, 56, 59, 60, and 61 of this chapter concerning the filing, printing, and changing of rate schedules and the time required for giving notice of hearing and requiring publication of notice do not apply to such a fuel cost charge or such a summary hearing.

(c) Regardless of the pendency of any request for a fuel cost charge by any electric utility, the books and records pertaining to the cost of fuel of all public, municipally owned, or cooperatively owned utilities that generate electricity shall be examined by the utility consumer counselor not less often than quarterly, and the books and records of all electric nongenerating public, municipally owned, or cooperatively owned utilities shall be examined by the utility consumer counselor not less often than annually. **At the time of a quarterly or an annual examination under this subsection, and to the extent permitted under section 49 of this chapter, the utility consumer counselor may also examine the books and records of any affiliated interest from which an electric utility purchases fuel or electricity to determine the reasonableness of the cost of the fuel or electricity obtained by the utility.** The utility consumer counselor shall provide the commission with a report as to the examination of said books and records within a reasonable time following said examination. The utility consumer counselor may, if appropriate, request of the commission a reduction or elimination of the fuel cost charge. Upon such request, the commission shall hold a hearing forthwith in the manner provided in sections 58, 59, and 60 of this chapter.

(d) An electric generating utility may apply for a change in its fuel charge not more often than each three (3) months. When such application is filed, the petitioning utility shall show to the commission its cost of fuel to generate electricity and the cost of fuel included in the cost of purchased electricity for the period between its last order from the commission approving fuel costs in its basic rates and the latest month for which actual fuel costs are available. The petitioning utility shall also estimate its average fuel costs for the three (3) calendar months subsequent to the expiration of the twenty (20) day period allowed the commission in subsection (b). The commission shall conduct a formal hearing solely on the fuel cost charge requested in the petition subject to the notice requirements of IC 8-1-1-8 and shall grant the electric utility the requested fuel cost charge if ~~it finds that:~~ **the commission makes the following determinations:**

(1) The electric utility has made every reasonable effort to acquire fuel and generate or purchase power or both so as to provide electricity to its retail customers at the lowest fuel cost reasonably possible.

(2) The actual increases in fuel cost through the latest month for which actual fuel costs are available since the last order of the commission approving basic rates and charges of the electric utility have not been offset by **any combination of the following:**

(A) Actual decreases in the electric utility's other operating expenses.

(B) Actual increases in the electric utility's revenues. In ascribing revenue to the electric utility, the commission may ignore any corporate distinction between the electric utility and an affiliated interest (as defined in section 49 of this chapter) from which the electric utility purchases fuel or electricity. Accordingly, the commission may consider any profits that:

(i) are received by an affiliated interest of the electric utility from the sale of fuel or electricity to the electric utility; and

(ii) result in the affiliated interest earning a rate of return that exceeds the rate of return authorized by the commission for the electric utility in the last proceeding in which the basic rates and charges of the electric utility were approved;

to be revenues of the electric utility.

(3) The fuel adjustment charge applied for will not result in the electric utility earning a return in excess of the return authorized by the commission in the last proceeding in which the basic rates and charges of the electric utility were approved. However, subject to section 42.3 of this chapter, if the fuel charge applied for will result in the electric utility earning a return in excess of the return authorized by the commission in the last proceeding in which basic rates and charges of the electric utility were approved, the fuel charge applied for will be reduced to the point where no such excess of return will be earned. ~~and~~

(4) The utility's estimate of its prospective average fuel costs for each such three (3) calendar months are reasonable after taking into consideration:

(A) the actual fuel costs experienced by the utility during the latest three (3) calendar months for which actual fuel costs are available; and

(B) the estimated fuel costs for the same latest three (3) calendar months for which actual fuel costs are available.

(e) Should the commission at any time determine that an emergency exists that could result in an abnormal change in fuel costs, it may, in order to protect the public from the adverse effects of such change, suspend the provisions of subsection (d) as to the utility or utilities affected by such an emergency and initiate such procedures as may be necessary to protect both the public and the utility from harm. The commission shall lift the suspension when it is satisfied the emergency no longer exists.

(f) Any change in the fuel cost charge granted by the commission under the provisions of this section shall be reflected in the rates charged by the utility in the same manner as any other changes in rates granted by the commission in a case approving the basic rates and charges of the utility. However, the utility may file the change as a separate amendment to its rate schedules with a reasonable reference therein that such charge is applicable to all of its filed rate schedules.

(g) No schedule of rates, tolls, and charges of a public, municipally owned, or cooperatively owned gas utility that includes or authorizes any changes in charges based upon gas costs is effective without the approval of the commission except those rates, tolls, and charges contained in schedules that contain specific provisions for changes in gas costs or the cost of gas that have previously been approved by the commission. Gas costs or cost of gas may include the gas utility's costs for gas purchased by it from pipeline suppliers, costs incurred for leased gas storage and related transportation, costs for supplemental and substitute gas supplies, costs incurred for exploration and development of its own sources of gas supplies, and other expenses relating to gas costs as shall be approved by the commission. Changes in a gas utility's rates, tolls, and charges based upon changes in its gas costs shall be made in accordance with the following provisions:

(1) Before the commission approves any changes in the schedule of rates, tolls, and charges of a gas utility based upon the cost of the gas, the utility consumer counselor may examine the books and records of the public, municipally owned, or cooperatively owned gas utility to determine the cost of

gas upon which the proposed changes are based. **To the extent permitted under section 49 of this chapter, the utility consumer counselor may also examine the books and records of any affiliated interest from which the gas utility purchases gas to determine the reasonableness of the cost of gas upon which the proposed charges are based.** In addition, before such an adjustment to the gas cost charge becomes effective, the commission shall hold a summary hearing on the sole issue of the gas cost adjustment. The utility consumer counselor shall conduct his a review and make a report to the commission within thirty (30) days after the utility's request for the gas cost adjustment is filed. The commission shall hold the summary hearing and issue its order within thirty (30) days after it receives the utility consumer counselor's report. The provisions of this section and sections 39, 43, 54, 55, 56, 59, 60, and 61 of this chapter concerning the filing, printing, and changing of rate schedules and the time required for giving notice of hearing and requiring publication of notice do not apply to such a gas cost adjustment or such a summary hearing.

(2) Regardless of the pendency of any request for a gas cost adjustment by any gas utility, the books and records pertaining to cost of gas of all public, municipally owned, or cooperatively owned gas utilities shall be examined by the utility consumer counselor not less often than annually. **At the time of an annual examination under this subsection, and to the extent permitted under section 49 of this chapter, the utility consumer counselor may also examine the books and records of any affiliated interest from which a gas utility purchases gas to determine the reasonableness of the cost of the gas obtained by the utility.** The utility consumer counselor shall provide the commission with a report as to the examination of said books and records within a reasonable time following said examination. The utility consumer counselor may, if appropriate, request of the commission a reduction or elimination of the gas cost adjustment. Upon such request, the commission shall hold a hearing forthwith in the manner provided in sections 58, 59, and 60 of this chapter.

(3) A gas utility may apply for a change in its gas cost charge not more often than each three (3) months. When such application is filed, the petitioning utility shall show to the commission its cost of gas for the period between its last order from the commission approving gas costs in its basic rates and the latest month for which actual gas costs are available. The petitioning utility shall also estimate its average gas costs for a recovery period of not less than the three (3) calendar months subsequent to the expiration of the thirty (30) day period allowed the commission in subdivision (1). The commission shall conduct a summary hearing solely on the gas cost adjustment requested in the petition subject to the notice requirements of IC 8-1-1-8 and may grant the gas utility the requested gas cost charge if ~~it finds that:~~ **the commission makes the following determinations:**

(A) The gas utility has made every reasonable effort to acquire long term gas supplies so as to provide gas to its retail customers at the lowest gas cost reasonably possible.

(B) The pipeline supplier or suppliers of the gas utility, **or any affiliated interests of the gas utility from which the gas utility purchases gas,** ~~has have~~ requested or ~~has have~~ filed for a change in the costs of gas pursuant to the jurisdiction and procedures of a duly constituted regulatory authority.

(C) **The actual increases in gas costs through the latest month for which actual gas costs are available since the last order of the commission approving basic rates and charges of the gas utility have not been offset by actual decreases in the gas utility's other operating expenses or actual increases in the gas utility's revenues, or both. In ascribing revenues to the gas utility, the commission may ignore any corporate distinction between the gas utility and an affiliated interest (as defined in section 49 of this chapter) from which the gas utility purchases gas. Accordingly, the commission may consider any profits that:**

(i) are received by an affiliated interest of the gas utility from the sale of gas to the gas utility; and

(ii) result in the affiliated interest earning a rate of return that exceeds the rate of return authorized by the commission for the gas utility in the last proceeding in which the basic rates and charges of the gas utility were approved;

to be revenues of the gas utility.

(D) The gas cost adjustment applied for will not result, in the case of a public utility, in its

earning a return in excess of the return authorized by the commission in the last proceeding in which the basic rates and charges of the public utility were approved; however, subject to section 42.3 of this chapter, if the gas cost adjustment applied for will result in the public utility earning a return in excess of the return authorized by the commission in the last proceeding in which basic rates and charges of the gas utility were approved, the gas cost adjustment applied for will be reduced to the point where no such excess of return will be earned. ~~and~~

~~(D)~~ **(E)** The utility's estimate of its prospective average gas costs for each such future recovery period is reasonable and gives effect to:

(i) the actual gas costs experienced by the utility during the latest recovery period for which actual gas costs are available; and

(ii) the actual gas costs recovered by the adjustment of the same recovery period.

(4) Should the commission at any time determine that an emergency exists that could result in an abnormal change in gas costs, it may, in order to protect the public or the utility from the adverse effects of such change, suspend the provisions of subdivision (3) as to the utility or utilities affected by such an emergency and initiate such procedures as may be necessary to protect both the public and the utility from harm. The commission shall lift the suspension when it is satisfied the emergency no longer exists.

(5) Any change in the gas cost charge granted by the commission under the provisions of this section shall be reflected in the rates charged by the utility in the same manner as any other changes in rates granted by the commission in a case approving the basic rates and charges of the utility. However, the utility may file the change as a separate amendment to its rate schedules with a reasonable reference therein that such charge is applicable to all of its filed rate schedules.

SECTION 2. IC 8-1-2-49 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec.

49. ~~(+)~~ **(a)** The commission, or any commissioner when authorized by the commission, or any person or persons employed by the commission for that purpose shall upon demand have the right to inspect the books, accounts, papers, records, and memoranda of any public utility and to examine, under oath, any officer, agent, or employee of such public utility in relation to its business and affairs. Any person other than one of said commissioners who shall make such demand shall produce ~~his~~ **the person's** authority to make such inspection. The commission shall have jurisdiction over holders of the voting capital stock of all public utility companies under its jurisdiction to such extent as may be necessary to enable the commission to require the disclosure of the identity in respective interests of every owner of any substantial interest in such voting capital stock. One percent (1%) or more is a substantial interest, within the meaning of this section.

~~(2) Said~~ **(b)** The commission shall have jurisdiction over ~~an affiliated interests interest~~ **an affiliated interest** having transactions, other than ownership of stock and receipt of dividends thereon, with ~~a utility corporations and corporation or other utility companies company~~ **an electric utility or a gas utility** under the jurisdiction of the commission, to the extent of access to all accounts and records, of joint or general expenses, any portion of which may be applicable to such transactions, and to the extent of authority to require such reports to be submitted by ~~such the affiliated interests interest~~ **the affiliated interest** as the commission may prescribe. **However, the commission shall have jurisdiction over an affiliated interest having transactions, other than ownership of stock and receipt of dividends thereon, with an electric utility or a gas utility under the jurisdiction of the commission, to the extent of:**

(1) access to all of the affiliated interest's accounts and records, any portion of which may apply, directly or indirectly, to:

(A) any transaction between the electric or gas utility and the affiliated interest; or

(B) any goods, services, or other consideration exchanged between the electric or gas utility and the affiliated interest; and

(2) authority to require any reports to be submitted by the affiliated interest as the commission may prescribe.

(c) For the purpose of this section only, "affiliated interests" include the following:

~~(a)~~ **(1)** Every corporation and person owning or holding directly or indirectly ten percent (10%) or more of the voting capital stock of such utility corporation.

~~(b)~~ **(2)** Every corporation and person in any chain of successive ownership of ten percent (10%) or more of voting capital stock.

~~(c)~~ **(3)** Every corporation ten percent (10%) or more of whose voting capital stock is owned by any

person or corporation owning ten percent (10%) or more of the voting capital stock of such utility corporation or by any person or corporation in any such chain of successive ownership of ten percent (10%) or more of voting capital stock.

~~(d)~~ **(4)** Every person who is an officer or director of such utility corporation or of any corporation in any chain of successive ownership of ten percent (10%) or more of voting capital stock.

~~(e)~~ **(5)** Every corporation which has one (1) or more officers or one (1) or more directors in common with such utility corporation.

~~(f)~~ **(6)** Every corporation or person which the commission may determine as a matter of fact after investigation and hearing is actually exercising any substantial influence over the policies and actions of such utility corporation even though such influence is not based upon stockholding, stockholders, directors, or officers to the extent specified in this section.

~~(g)~~ **(7)** Every person or corporation who or which the commission may determine as a matter of fact after investigation and hearing is actually exercising such substantial influence over the policies and actions of such utility corporation in conjunction with one (1) or more other corporations and/or persons with which or whom they are related by ownership and/or blood relationship or by action in concert that together they are affiliated with such utility corporation within the meaning of this section even though no one of them alone is so affiliated. ~~provided;~~ However, ~~that~~ no such person or corporation shall be considered as affiliated within the meaning of this section if such person or corporation is otherwise subject to the jurisdiction of the commission or such person or corporation shall not have had transactions or dealings other than the holding of stock and the receipt of dividends thereon with such utility corporation during the two (2) year period next preceding.

No management, construction, engineering, or similar contract, made after March 8, 1933, with any affiliated interest, as defined in this section, shall be effective unless it shall first have been filed with the commission. If it be found that any such contract is not in the public interest, the commission, after investigation and a hearing, is hereby authorized to disapprove such contract.

~~(3)~~ **(d)** Every annual report of any utility corporation reporting under this chapter to the commission shall contain, in addition to any other information required to be included by or pursuant to law, the following information:

~~(a)~~ **(1)** It shall state the name and address of, and the number of shares held by each holder of one percent (1%) or more of the voting capital stock of the reporting corporation, according to its records.

~~(b)~~ **(2)** Where one percent (1%) or more of the voting capital stock of the reporting corporation is held by a trustee or trustees, or other intermediate agency, for the beneficial interest of an owner or owners, other than the holder of record, or where one percent (1%) or more of the voting capital stock of the reporting corporation is held by another corporation, such annual report shall state, if the information is available from the records of the reporting corporation, the name and addresses and respective interests of such beneficial owners, and the names and addresses of the officers and directors of any such other corporation and the total number of shares of capital stock thereof held by each, showing separately the number of shares of the voting capital stock, and the names and addresses and respective stockholdings of every stockholder of such other corporation holding one percent (1%) or more of its voting capital stock. Such report shall be accompanied by a certified copy of each trust agreement or other instrument under which any voting capital stock of the reporting corporation is held.

Where the information specified in subsection ~~(3)(b)~~ **(c)(2)** is not available from the records of the reporting corporation, any such holder, of record, of one percent (1%) or more of the voting capital stock of the reporting corporation, if ordered so to do by the commission, shall file with the commission, a sworn statement, in such form and to be filed within such time as the commission shall prescribe, setting forth whether or not any of such stock held by him or it is so held for the beneficial ownership of any person, firm, limited liability company, or corporation other than the record holder thereof, and, if stated to be so held, the names, addresses, and respective interests of such beneficial owners. If such stockholder is a trustee, he or it also shall file with such statement a certified copy of the trust agreement or other instrument under which such stock is held. A corporation which is the holder, of record, of one percent (1%) or more of the voting capital stock of the reporting corporation, if ordered so to do by the commission, and regardless of whether the information is or is not available or apparently available from the records of the reporting corporation, also shall file with the commission a sworn statement, in such form and to be filed within such time as the commission shall prescribe, or shall include in the sworn statement, if any, required to be filed by it pursuant to other provisions of this chapter a statement setting forth the names and addresses of its officers and directors and the total number of shares of its capital

stock, held by each, showing separately the number of shares of the voting capital stock, and the names and addresses and respective stockholdings of each stockholder thereof holding one percent (1%) or more of its voting capital stock.

~~(4)~~ (e) If the annual report, or the sworn statements provided for in this section, do not furnish the information desired, because of any chain of successive ownership or of stockholdings, or because of an intermediate agency or agencies, or for any other reason, the commission, by order, may require similar sworn statements from any person or corporation who or which can give the necessary information, as the commission may have discovered from its investigations, to the end that the commission may obtain a complete disclosure of the natural persons, firms, limited liability companies, or corporations and their respective interests, who or which own or control directly or indirectly one percent (1%) or more of the voting capital stock of the reporting corporation."

Page 2, after line 8, begin a new paragraph and insert:

"SECTION 6. **An emergency is declared for this act.**".

Renumber all SECTIONS consecutively.

(Reference is to HB 1882 as printed February 6, 2001.)